

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

TROY COURTLAND SENEGAL,)	CASE NO. ED CV 10-00874 AHM (RZ)
)	
Petitioner,)	
)	ORDER TO SHOW CAUSE
vs.)	RE TIMELINESS
)	
L. SMALL, Warden,)	
)	
Respondent.)	
_____)	

The Court issues this Order To Show Cause directed to Plaintiff because the face of the petition suggests that the action may be time-barred.

In 1996, Congress enacted the Antiterrorism and Effective Death Penalty Act (“AEDPA”), a portion of which established a one-year statute of limitations for bringing a habeas corpus petition in federal court. 28 U.S.C. § 2244(d). In most cases, the limitations period commences on the date a petitioner’s conviction became final. *See* 28 U.S.C. § 2244(d)(1). The limitations period will start instead on one of the following dates, whichever is latest, if any of them falls after the petitioner’s conviction becomes final: the date on which a State-created impediment – itself a violation of Constitutional law – was removed; the date on which a newly-recognized Constitutional right was established; or the date on which the factual predicate for the claims could have been discovered through the exercise of due diligence. 28 U.S.C. § 2244(d)(1).

1 somehow enjoys a later starting date, in 2006, for his AEDPA limitations period, this action
2 still would be untimely, for well over one year passed between (a) the California Supreme
3 Court's April 2007 rejection of his first habeas petition and (b) Petitioner's next filing of
4 any legal challenge to his conviction or sentence.

5 No basis appears in the petition for a later AEDPA-limitations-period starting
6 date. Nor does the face of the petition disclose any basis for equitable tolling. *See Pace*
7 *v. DiGuglielmo*, 544 U.S. 408, 418, 125 S. Ct. 1807, 161 L. Ed. 2d 669 (2005) (equitable
8 tolling of AEDPA statute requires petitioner to show "(1) that he has been pursuing his
9 rights diligently, and (2) that some extraordinary circumstance stood in his way"), *quoted*
10 *in Harris, supra*, 515 F.3d at 1054-55.

11 This Court may raise *sua sponte* the question of the statute of limitations bar,
12 so long as it gives Petitioner an opportunity to be heard on the matter. *Herbst v. Cook*, 260
13 F.3d 1039 (9th Cir. 2001). Accordingly, Petitioner shall show cause in writing why this
14 action should not be dismissed as being barred by the one-year statute of limitations.
15 Petitioner shall file his response to the Court's Order to Show Cause not later than 21 days
16 from the filing date of this Order.

17 If Petitioner does not file a response within the time allowed, the action may
18 be dismissed for failure to timely file, and for failure to prosecute.

19 IT IS SO ORDERED.

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21 DATED: June 14, 2010

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RALPH ZAREFSKY
UNITED STATES MAGISTRATE JUDGE
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